



Issuance of FMLA Notification/ Certification Materials

The following is general guidance summarizing the federal Family and Medical Leave Act (FMLA) notice requirements. This document is intended to provide general guidance on the federal FMLA notice requirements' interaction with our state leave regulations: 101 KAR 2:102 and 101 KAR 3:015.

1. **General Notification of FMLA Rights:** An agency is required to display the FMLA poster entitled "Employee Rights and Responsibilities under the Family and Medical Leave Act" in a conspicuous place at all work locations.ⁱ The poster may be obtained at the following link:
<http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>. The FMLA poster is included in the Employee Handbook as well.ⁱⁱ
2. **Application, Notification, and Certification Paperwork:** When an employee requests family and medical leave, or when an agency acquires knowledge that an employee's leave may be taken for an FMLA-qualifying reason, the employer is required to notify the employee of his or her eligibility to take family and medical leave within **five (5) business days**, absent exigent circumstances.ⁱⁱⁱ NOTE: If challenged, the employer bears the burden to establish that an employee actually received notification.
 - a. This means that the agency should notify the employee if the employee meets the eligibility requirements listed in 101 KAR 2:102 Section 3(2) and 101 KAR 3:015 Section 3(2). In order to meet the eligibility requirements, an employee must have: (a) completed twelve (12) months of service; and (b) worked or been on paid leave at least 1,250 hours in the twelve (12) months immediately preceding the first day of family and medical leave.^{iv} **The agency should notify the employee even if the employee is currently using accrued paid leave.**
 - b. If an employee is determined to be eligible for family and medical leave, the agency should distribute the following documentation to the employee at this time:
 - i. **Cover Letter regarding Application for Family and Medical Leave;**
 - ii. **Application for Family and Medical Leave:** <https://personnel.ky.gov/Documents/FMLA%20-%20Application%20.pdf> ;
 - iii. **Notification of Eligibility and Rights and Responsibilities;**^v
 - iv. One of the following **Certification** packets:
 1. Certification of a Health Care Provider for Employee's Serious Health Condition:
<http://www.dol.gov/whd/forms/WH-380-E.pdf>;
 2. Certification of a Health Care Provide for Family Member's Serious Health Condition:
<http://www.dol.gov/whd/forms/WH-380-F.pdf>;
 3. Certification of Qualifying Exigency for Military Leave:
<http://www.dol.gov/whd/forms/WH-384.pdf>;
 4. Certification of Serious Injury or Illness of Current Servicemember- for Military Family Leave: <http://www.dol.gov/whd/forms/WH-385.pdf>;
 5. Certification of Serious Injury or Illness of a Veteran for Military Caregiver Leave:
<http://www.dol.gov/whd/forms/wh385V.pdf>.
3. **Designation Notice:** Upon receipt of a completed and sufficient certification, an agency is required to issue a **Designation Notice** within five (5) business days absent extenuating circumstances.^{vi}
4. **RECOMMENDATION:** If the employee does not complete and return the FMLA Application and Certification paperwork, the agency should reissue the FMLA **Application, Notification of Eligibility and Rights and Responsibilities**, and **Certification** paperwork to the employee at least fifteen (15) calendar days prior to the expiration of accrued leave.

5. **Recertification during the Same Calendar Year:** Recertification for leave taken because of an employee's own serious health condition or the serious health condition of a family member may be requested under the following circumstances:
- In all cases, an agency may request recertification every six (6) months in connection with an absence;^{vii}
 - If the medical certification indicates the minimum duration of the condition is less than thirty (30) days, then the agency may request recertification every thirty (30) days in connection with an absence by the employee;^{viii}
 - If the medical certification indicates the minimum duration of the condition is more than thirty (30) days, then the agency generally must wait until that minimum duration expires before requesting a recertification;^{ix}
 - Regardless of the minimum duration of the condition indicated on the medical certification, an agency may always request recertification for the following reasons:
 - The employee requests an extension of family and medical leave;^x
 - The circumstances described by the previous certification have changed significantly;^{xi}
 - The agency receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.^{xii}
 - For a full explanation of when recertification may be requested please refer to 29 C.F.R § 825.308.
6. **Reapplication upon the Expiration of the Calendar Year:**
- An employee's eligibility for family and medical leave is determined on a calendar year basis.^{xiii}
 - Therefore, if an employee is taking **continuous** leave for an FMLA-qualifying reason at the end of a calendar year, the agency should reissue the employee a new Application for Family and Medical Leave, Notice of Eligibility and Rights and Responsibilities, and Certification packet prior to the beginning of the new calendar year, in accordance with the guidance outlined above. The agency should issue a new Designation Notice for the new calendar year as well.
 - NOTE: If an employee is using family and medical leave intermittently, then paperwork should not be reissued until an employee incurs an absence in the new calendar year.

ⁱ 29 C.F.R. § 825.300(a)(1) and (2).

ⁱⁱ 29 C.F.R. § 825.300(a)(3).

ⁱⁱⁱ 29 C.F.R. § 825.300(b)(1).

^{iv} 101 KAR 2:102 Section 3(2) and 101 KAR 3:015 Section 3(2).

^v 29 C.F.R. § 825.300(b) and (c).

^{vi} 29 C.F.R. § 825.300(d)(1).

^{vii} 29 C.F.R. § 825.308(b).

^{viii} 29 C.F.R. § 825.308(a).

^{ix} 29 C.F.R. § 825.308(b).

^x 29 C.F.R. § 825.308(c)(1).

^{xi} 29 C.F.R. § 825.308(c)(2).

^{xii} 29 C.F.R. § 825.308(c)(3).

^{xiii} 29 C.F.R. § 825.200(b); 101 KAR 2:102 Section 3(3); and 101 KAR 3:015 Section 3(3).----February, 2014